Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
The 2002 Biennial Review of	)	
Telecommunications Regulations	)	WT Docket No. 02-310
Within the Purview of the	)	
Wireless Telecommunications Bureau	)	
	)	

To: The Commission

REPLY COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
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The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), pursuant to Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") rules and regulations, respectfully submits its Reply Comments in the above-entitled proceeding.[1] The proceeding represents the Commission's 2002 biennial review of telecommunications regulations pursuant to Section 11 of the Communications Act of 1934. The Act directs the agency to determine whether the modification or elimination of any of its regulations would serve the public interest. AMTA is pleased to offer suggestions as to rule changes that would be consistent with that objective.

I. INTRODUCTION

AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz operators, licensees of wide-area Specialized Mobile Radio ("SMR") systems, and commercial licensees in the 220 MHz and 450-512 MHz bands. All of AMTA's members operate pursuant to the regulations set out in Part 90 of the Commission's rules; many also are subject to certain provisions of the rules codified in Parts 17, 20, 22 and 101. Thus, the Association and its members have a substantial, direct interest in the outcome of this proceeding.

II. RECOMMENDATIONS

[1] *Public Notice*, FCC 02-264 (rel. Sept. 26, 2002) ("Public Notice").

1. The scope of the biennial review is broad. In addition to identifying where the public interest warrants modifying or eliminating any of its requirements, the FCC also has asked for comment on rule changes that would enable the agency to operate more efficiently and effectively. Given the encompassing nature of the Commission's inquiry, it is unfortunate that only a relatively small number of comments were filed in response to the Public Notice. It is possible that the limited input submitted to the Commission reflects a belief by the industry that there are very few regulations that should be modified or jettisoned. The more likely explanation is that a significant number of the wireless entities affected most directly by the FCC's review have been devoting much of their attention to addressing the public safety/Commercial Mobile Radio Service ("CMRS") interference issues raised in WT Docket No. 02-55.[2] Most members of the Land Mobile Communications Council ("LMCC"), an organization that typically would endeavor to provide consolidated industry comments in a proceeding such as this one, are actively engaged in that 800 MHz rule making and have had only a limited opportunity to consider and submit comments on the equally significant, but not as time sensitive, matters under consideration herein.

[2] *Notice of Proposed Rule Making*, WT Docket No. 02-55, FCC 02-81 (rel. March 15, 2002) ("NPR" or "Notice").

2. AMTA itself would have preferred a lengthier opportunity to review and solicit member input on the multiplicity of regulations that regulate the activities of Part 90 applicants and licensees.[3] It may seek to supplement these Reply Comments at a later date, and urges the Commission to accept late-filed pleadings for some reasonable period and to the extent they include recommendations demonstrably in the public interest. However, at this juncture, the Association recommends that the FCC consider the following proposals for modifying or eliminating its rules.

A. Conditional Licensing: Section 90.159

3. In its comments in this proceeding, the American Petroleum Institute ("API") recommended that the FCC extend the Part 101 conditional licensing provisions to MAS facilities. AMTA similarly recommends that the conditional licensing provisions of FCC Rule Section 90.159 be expanded to include coordinated systems in the bands above 470 MHz.

[3]The Public Notice provided only an approximately three-week Comment period with an additional two weeks for Reply Comments, a very abbreviated cycle given the scope of the regulations under consideration.

4. The current rule extends the provisions of FCC Rule Section 90.159 to applicants for new stations that have satisfied the Commission's frequency coordination requirements. The rule was intended to speed the progress of industrial and commercial activities.[4] In adopting the provision, the FCC indicated it would limit this rule to licensees below 470 MHz and in the 929-930 MHz band to avoid any potential disruption to the operations of existing licensees in the higher bands where frequencies may be authorized on an exclusive basis.[5] In making that decision the Commission stated that the fundamental prerequisite was that, "the applications subject to this procedure must be routine and virtually never challenged."[6] The FCC noted that licenses above 470 MHz have additional non-coordination issues that require Commission review of initial applications, such as a demonstrated need for a requested mobile capacity that warrants exclusive use of a frequency or actual mobile operations sufficient to justify a request for an additional conventional channel or multi-channel trunked facility.[7]

5. Since adoption of the original conditional licensing provision, the FCC has made substantive modifications to the rules governing systems below 470 MHz. For example, the rules now permit trunking in the bands below 470 MHz, yet operation on the basis of conditional authority has not proved to be a problem in the context of decentralized or even centralized trunking. In fact, it could be argued that the channel exclusivity rules in the 470-512 MHz, 800 MHz and 900 MHz

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[4] *Report and Order In the Matter of Amendment of Part 90 of the Commission's Rules to Implement a Conditional Authorization Procedure for Proposed Private Land Mobile Radio Service Stations*, 4 FCC Rcd 8280, 8281 (October 26, 1989).

[5] *Id.*

[6] *Id.*

[7] *Id.*

bands are more clear-cut and require less coordinator analysis than the contour showings that determine the permissibility of trunking in the lower bands.

6. All applicants are aware that conditional authority is not a guarantee that the applied for license will be granted. Parties that choose to operate pursuant to conditional authority do so knowing that their application could be dismissed and temporary authority automatically revoked, yet the below 470 MHz applicants continue to utilize conditional authority even when deploying centralized trunked systems. The same opportunity should be extended to applicants above 470 MHz whose applications have been determined by a frequency coordinator to be in accordance with applicable FCC requirements.

7. When the conditional licensing rules were adopted, the Commission specifically stated that it would "consider expanding this concept in the future as we gain experience in its application."[8] There is no question that the availability of conditional licensing is in the public interest. It permits the earlier use of channels which have been determined by an FCC-certified frequency advisory committee to be available in the area requested in accordance with the technical parameters identified in the application. The very small number of issues that arise in respect to coordinated Part 90 applications, both in the spectrum bands to which the rule already applies and to the bands from 470 MHz to 900 MHz, support a determination that this more flexible regulation should be expanded to include those upper bands.

2. Safe Harbor Table: Section 90.205

8. The so-called "Safe Harbor" Table defines the permissible power and antenna heights for systems in the bands below 470 MHz. The Table was adopted as part of the FCC's refarming

[8] *Id.*

effort to increase the utilization of these heavily encumbered bands.[9] The FCC adopted its Safe Harbor approach to height and power limits in an attempt to permit increased channel reuse. The Commission stated that, "the existence of high power systems can limit the choices available to other current and future co-channel users. In addition, the use of more transmitter power than necessary is contrary to the Commission's rules and reduces the amount of spectrum available for other users."[10]

9. It is by no means certain that the restrictions adopted have significantly increased channel reuse. In at least some instances the unfortunate result has been that licensees with wider-area system needs have been required to build otherwise unnecessary additional facilities, at a commensurately greater cost, to achieve their necessary coverage. Even more problematic, however, are the technical problems that arise because of the disparity between the operational parameters of incumbent licensees whose existing power levels were grandfathered and newer co-channel licensees operating pursuant to the limitations of the Table. The lack of equilibrium between grandfathered and non-grandfathered systems on spectrum that generally is shared by multiple licensees within the same geographic area can make it extremely difficult for the new, lower-power system to capture its mobiles even when they are operating within their authorized service area. The disparity in power levels can prevent a non-grandfathered system from communicating even in areas that the grandfathered system has no interest in covering.

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[9] *Report and Order and Further Notice of Proposed Rulemaking In the Matter of Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services*, 10 FCC Rcd 10076 (June 23, 1995).

[10] *Id.* at 10112.

10. This problem is exacerbated at very elevated transmitter sites, particularly those located on high peaks. The Table sometimes restricts licensees on the commonly used mountaintop sites in the western states to coverage of a small radius around the site, and prevents them from putting a signal of adequate strength in the nearby populated market intended to be served.

11. The Commission's purpose was to increase channel reuse, and thereby improve spectrum efficiency while allowing licensees needed flexibility to design individual systems and provide for the diversity of service areas and operating requirements of licensees in the Private Land Mobile Radio ("PLMR") services.[11] However, experience supports a determination that the Safe Harbor Table unnecessarily restricts the operations of newer systems without producing any demonstrable improvement in channel reuse or spectrum efficiency. AMTA urges the Commission to revisit the Table and determine whether it should be modified or eliminated in favor of superior approaches to increased spectrum efficiency such as the mandatory migration to narrowband technology.

C. Coordination for Deletion of a Frequency or Site: Sections 90.135(b), 1.929(c)(4)(i),(v)

12. In its comments, API recommended that licensees should be permitted to delete a site from a multi-site authorization without undergoing frequency coordination. AMTA supports that recommendation and asks the FCC also to eliminate the coordination requirement when a frequency is deleted from an authorization. Unlike adding a channel or site which requires a coordinator to determine whether the frequency or location requested is available in accordance with applicable rules, no actual coordination function is performed when either is deleted. As explained by API, the

[11] *Id.* at 10113.

requirement is a remnant from a time before the Universal Licensing System ("ULS") when the data coordinators needed to fulfill their responsibilities was not readily accessible unless provided to them directly as part of the application process. ULS now permits coordinators and the public access to current information on a routine basis. Elimination of the coordination requirement in these two circumstances will not adversely affect the coordination function but will eliminate an unnecessarily burdensome, costly FCC requirement.

4. Part 22 Two-Way Dispatch Operation: Sections 22.7, 22.577, 22.569

13. The Commission recently held an auction of the Part 22 channels designated for one-way or two-way mobile operation.[12] Some number of winning bidders in that auction, particularly those that acquired two-way channels in the 450 MHz band, purchased the spectrum with the intention of providing primarily two-way dispatch service on it. The spectrum is ideally suited for that purpose, either on a stand-alone basis or when incorporated into a 450 MHz system authorized under Part 90 of the Commission's rules.

14. Although the FCC in recent years has taken numerous steps to permit enhanced licensee flexibility, in particular when the channels have been acquired in an auction and the system is classified as CMRS, the Part 22 rules governing permissible uses of the spectrum is question requires clarification or modification in certain respects. First, FCC Rule Section 22.7 defines all licensees holding Part 22 licenses as presumptively common carriers. Of course, this definition was adopted prior to statutory enactment of the CMRS/PMRS distinction[13] or the later statutory

[12]FCC Auction 40.

[13]Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(b)(2)(A), 107 Stat. 312, 392 (1993).

definition of a telecommunications carrier.[14] These more current regulatory delineations should be incorporated in Part 22, thereby making the spectrum available for a broader range of carriers, by modifying Section 22.7 to specify "telecommunications carriers" rather than "common carriers" as the criterion for eligible entities.

[14] Balanced Budget Act of 1997, Pub. L. No. 105-33, Title III, 111 Stat. 251 (1997).

15. The FCC also should modify or even eliminate the provisions of Rule Section 22.577 governing Part 22 dispatch service. That rule was adopted at a time when the Commission still was maintaining bright lines of distinction between the types of service offerings permitted on otherwise seemingly comparable systems.[15] More recently, the FCC has disfavored such delineations as inconsistent with an overall objective of allowing the marketplace to determine the optimal use for particular spectrum whenever possible. The limitations of Section 22.577 had a specific regulatory intent at a particular time in the Commission's regulatory history. They no longer serve any useful technical, operational or competitive purpose and should be eliminated.

16. Finally, Section 22.569 limits entities to no more than two channels in a given area for two-way mobile operation. This restriction clearly antedates the Commission's migration to auctions as the primary, in many cases exclusive, mechanism for awarding spectrum. It is the vestige of a time when there were highly limited amounts of spectrum and licenses were "free". The FCC rules were structured to prevent both spectrum warehousing and undue concentration in the marketplace.

17. The FCC already has determined that neither of those concerns are applicable in the auction context and Auction 40 included no such restriction on channel acquisition. While it is apparent the FCC did not intend this rule to apply to licensees in this recent auction, the rule should be clarified to exempt such parties and thereby avoid any future confusion on this point.

III. CONCLUSION

[15] *Eligibility for the Specialized Mobile Radio Services and Radio Services in the 220-222 MHz Land Mobile Band and Use of Radio Dispatch Communications,* Report and Order, 10 FCC Rcd 6280 (1995), *recon. denied*, 12 FCC Rcd 9962 (1997).

18. For the reasons described herein, AMTA urges the Commission to adopt rule changes and eliminate certain of its rules consistent with the view expressed above.